HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 423 of 2006

Ram Kishore
S/o Balak Ram
R/o 3, Madari Raod, Biharipur
Bareilly, U.P. .....Applicant

Versus

1. State of Uttaranchal
2. Balram alias Anup Kumar
   S/o Sri Harnam Singh
   R/o Deep Niwas, Donaharia
   Thana Haldwani, District Nainita .Respondents

Dated:- 15th June, 2006

Shri Sidhartha Sah learned counsel for the applicant.
Shri Amit Bhatt, learned A.G.A. for the State.

Hon'ble J.C.S. Rawat, J.

The petition under section 482 Cr.P.C. has been filed for quashing the summoning order dated 15.09.2005 passed by the Judicial Magistrate, Haldwani in criminal complaint case No. 865/2005 under sections 452, 323 IPC and order dated 18.05.2006 passed by the Sessions Judge, Nainital in criminal revision No. 51/2005.

Brief facts of the case are that the respondent no.2-Balram filed a compliant before the Magistrate against the applicant-Ram Kishore and his family members alleging therein that the marriage was solemnized in between the respondent No. 2-Balram and Smt. Rekh D/o Ram Kishore in the year 2003. It was further alleged that the applicant and his family members used to torture him. Thereafter, his wife was taken forcibly to Bareilly by her parents. They were threatening him with the dire consequences. It was further alleged that on 27.03.2005 the accused persons forcibly entered into the house of the respondent no. 2

and started abusing him. The respondent No.2 was assaulted by the kicks and fist. When the family members of the respondent no. 2 and his tow neighbours viz. Panchpal and Kailash Sharma reached at the spot, the accused persons fled away from the place of occurrence. The learned Magistrate recorded the statements. Under section 200 & 202 Cr.P.C. and thereafter he summoned the applicant vide order dated 15.09.2005. Feeling aggrieved by the order of Magistrate, the applicant preferred a revision before the Sessions Judge and the same was dismissed vide order dated 18.05.2006. Feeling aggrieved by this, the present petition has been filed.

It was contended on behalf of the applicant that the respondent no. 2 has filed a complaint before the Magistrate against the applicant and other persons as a counter blast of the various criminal proceedings initiated against him under section 498A IPC. It was pointed out that the daughter of the applicant has filed an application under section 125 Cr.P.C. against the respondent no.2 in the family court, Bareilly. Another case under section 406 IPC is pending against the respondent no. 2 and his family members. It was contended that the respondent no. 2 has filed the present complaint with the mala-fide intentions due to personal grudge. It was further contended that the complaint do not materially corroborate the averments made in the complaint filed by the respondent NO. 2. And there are certain contradictions in the evidence. It was contended that the complainant –respondent no. 2 had stated that he was assaulted by kicks and fist Whereas the statement recorded under section 202 Cr.P.C. shows that a slap was given on the complainant. It was contended that the story is improbable. Learned

AGA refuted the contention and contended that there is a prima facie case against the applicant under section 452, 323 IPC. Perusal of the record reveals that the applicant has been summoned under section 452, 323 IPC. The statement of the complainant and the averments made in the compliant is slightly in variance. It is admitted that after the marriage the relations between the complainant and the daughter of the applicant were strained and there was no occasion of the applicant to reach at the spot and to assault the complainant. The Magistrate has not put any question to the witnesses with regard to the cases pending between the parties. The Magistrate has to consider the statement on oath recorded under sections 200, 202 Cr.P.C. and other evidence filed on behalf of the complainant. It is the duty of the Magistrate to ensure as to whether the case is probable and whether the case is concocted or correct one. The learned Magistrate should have put questions to the witnesses as well as to the complainant. The learned counsel for the applicant has referred the decision of the Hon'ble Apex Court in **M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate J.T. 1997 (8) S.C. p/705,** in which it has been held as under:

> *"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complainant to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to*

examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

4) The above proposition of law clearly emphasizes that the Magistrate, while summoning the accused or taking the cognizance, should scrutinize the evidence and put the question to all the witnesses as well as to the complainant.

5) In view of the above, the summoning order passed by the learned Magistrate is liable to be set aside. The Magistrate should have put the question to the complainant as well as to the witnesses to know the veracity of the incident. It is also admitted case that daughter of the applicant and the complainant are living separately and their relations are strained. The Magistrate should have verified by putting questions as to whether the present complaint is actually a counter-blast or as to whether the incident took place or not.

6) Therefore, the summoning order dated 15.9.2005 passed by the Judicial Magistrate, Haldwani in criminal complaint case No. 865/2005 under sections 452, 323 IPC and order dated 18.05.2006 passed by the sessions Judge, Nainital in criminal revision No. 51/2005 are set-aside. The case is remitted back to the learned Magistrate to decide the same afresh in the light of the observations made above.

7) The petition is disposed of accordingly. The misc. application, if any, is also disposed of.

(J.C.S. Rawat, J.)

Dated 15.06.2006
LSR